



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TLC Systems
File: B-226531.2
Date: July 30, 1987

DIGEST

1. Protest against cancellation of invitation for bids after opening is denied where agency canceled solicitation after it properly determined that no responsive bids had been received and conceded that it had improperly asked for descriptive data after bid opening.

2. Claim for bid preparation and protest costs is denied because the underlying protest is denied. Further, claim for lost profits is denied since General Accounting Office does not permit the recovery of anticipated profits.

DECISION

TLC Systems protests the Air Force's cancellation of invitation for bids (IFB) No. F07603-86-B0056 for the purchase and installation of a central computerized fire monitoring system at Dover Air Force Base. The Air Force canceled the solicitation after reviewing the award procedures in response to an earlier protest filed by TLC against the rejection of its bid. The Air Force found that none of the bidders had submitted sufficient descriptive literature with its bid and that the contracting officer had improperly requested additional descriptive literature from the three lowest bidders after bid opening. TLC argues that its bid, as originally submitted, was responsive and low, and that it should therefore have received the award. In the event that we uphold the cancellation, TLC claims its costs of bid preparation and pursuing the protest as well as its anticipated profits. We deny the protest and the claim for costs.

The IFB requested bids for a computerized fire monitoring system. The bid schedule stated that the system must comply with National Fire Protection Association (NFPA) Standard 72D and include a microprocessor, a video display terminal, a dot-matrix high-speed printer, a documented

039599

processing language software program, future color and graphics capability, and an uninterruptible power source. The bid schedule instructed bidders to include technical/descriptive literature with their bids. In addition, Section M of the solicitation advised that bids would be "evaluated on the salient characteristics listed in Section B [the bid schedule] and the specifications in Section C based on the technical/descriptive literature submitted with the bid and the total cost of the system to the Government."

TLC submitted the lowest of the six bids received. The contracting officer determined that none of the six bidders had submitted sufficient descriptive literature to demonstrate that its bid met the solicitation's requirements. Rather than rejecting all bids and canceling the solicitation, however, the contracting officer requested additional descriptive literature from the three low bidders.

Upon receipt of the additional literature, the contracting officer determined that TLC still had not shown that its system met the solicitation's requirements. He therefore rejected TLC's bid as nonresponsive.

On March 16, 1987, TLC filed with our Office a protest against the proposed award to ADT. After reviewing its award process in response to the protest, the Air Force decided to cancel the solicitation due to "irregularities in the acquisition process." The Air Force reported that a technical evaluation of the descriptive literature initially submitted with the bids revealed that all literature was insufficient to demonstrate compliance with the IFB's salient characteristics, and therefore all bids should have been rejected. Upon receipt of the Air Force's notification that it had canceled the solicitation, we dismissed TLC's protest as academic. TLC then protested the cancellation, arguing that its initial bid was responsive.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1986), provides that a solicitation may be canceled before award but after opening if there is a compelling reason to do so. The regulations specifically state that a compelling reason to cancel exists where no responsive bids have been received. FAR, 48 C.F.R. § 14.404-1(c)(6).

A bid is responsive when it represents an unequivocal offer to provide the requested items in conformance with the material terms of an IFB. Morey Machinery, Inc., B-225367, Dec. 12, 1986, 86-2 CPD ¶ 672. Where, as here, descriptive literature is required to be supplied for use in bid

evaluation, generally the bid must be rejected if the bid and the data submitted with the bid do not clearly show that the offered product complies with the specifications. Zero Manufacturing Co., B-210123.2, Apr. 15, 1983, 83-1 CPD ¶ 416.

TLC seems to argue in the alternative that its descriptive data showed that the items it offered met all the solicitation requirements or that if it did not, the data showed that TLC's equipment complied with NFPA Standard 72D, which was all that the solicitation required.

First, we do not think that TLC's position that the IFB only required descriptive data to show compliance with Standard 72D is reasonable. Section B of the solicitation included the reference to Standard 72D as well as a listing of features that the various components were to have, i.e. "microprocessor with dual floppy disks, 256K-Bytes RAM (minimum)" At the bottom of Section B appeared the phrase "PLEASE PROVIDE TECHNICAL/DESCRIPTIVE LITERATURE ON THE SYSTEM THAT YOU ARE BIDDING ON." Further, Section M stated that the descriptive literature would be used to evaluate the "salient characteristics listed in Section B" and the specifications in Section C. We think that it is clear, reading these provisions together, that the data submitted was to be used to determine whether the offered system met all the features listed in Section B as well as Standard 72D.

As far as the responsiveness of TLC's original bid is concerned, the agency states that the bid did not contain sufficient data to show that TLC's system had an uninterruptible power supply and future color graphics capability as required by Section B of the IFB. While it is difficult to decipher TLC's arguments on this issue, it appears to be the protester's position that the literature submitted after bid opening showed that it would provide an uninterruptible power supply even though TLC does not believe that its system needs one. Further, TLC appears to argue that it also provided information after bid opening concerning the system's future color graphics capability.

Although the record and the protester's arguments are not clear in all respects, it appears that the protester submitted literature describing three different systems with its bid, but the bid contained prices for only one system and did not identify which system was to be offered. It is clear that the agency held conversations (apparently concerning only one of the systems) with, and accepted additional literature from, TLC after bid opening because the data submitted with TLC's original bid did not show that the system or systems offered met all of the solicitation

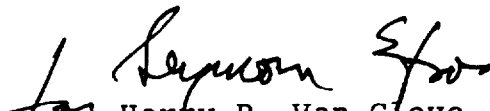
requirements. The agency acted improperly in requesting additional literature and in holding discussions with TLC and others after bid opening, however, since such actions are inconsistent with the use of sealed bid procedures. Emerson Electric Co., B-221827.2, June 4, 1986, 86-1 CPD ¶ 521.

Under these circumstances, where TLC and all other bidders were nonresponsive because of inadequate descriptive literature, and where the agency improperly sought additional literature from some of the bidders, it is our view that the agency acted properly in canceling the solicitation. We therefore deny the protest.

TLC states that it is entitled to bid preparation and protest costs and its anticipated profits because of the cancellation.

Our Bid Protest Regulations provide for the recovery of costs only where a protest is found to have merit. 4 C.F.R. § 21.6(d) (1987). Since we find the cancellation of the solicitation to be proper, there is no legal basis for recovery of either TLC's bid preparation or protest costs. Cellular Product Service, Inc., B-222614, July 3, 1986, 86-2 CPD ¶ 32. Further, we do not permit the recovery of anticipated profits even in the presence of wrongful action. Sonic, Inc., B-225462.2, May 21, 1987, 87-1 CPD ¶ 531.

The protest and the claim are denied.


Harry R. Van Cleve
General Counsel